

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

AUG 22 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2008-0011-PR
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ROGER ANDREW RAMON,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
	)	

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PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20062237

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

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Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Roger Ramon

Buckeye  
In Propria Persona

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E C K E R S T R O M, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Roger Ramon was convicted in April 2007 of armed robbery and aggravated assault, both dangerous-nature offenses. The trial court sentenced him to a presumptive prison term of 10.5 years for the armed robbery conviction and a consecutive, mitigated prison term of five years for the aggravated assault conviction.

¶2 Ramon filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In the ensuing petition filed by appointed counsel, Ramon argued the trial court had erred by failing to state on the record its reasons for imposing consecutive, rather than concurrent, prison terms. He maintained such a statement was required by A.R.S. § 13-708 and asked the court to resentence him to concurrent terms or, at the least, hold an evidentiary hearing to determine the merits of his claim for such relief.

¶3 The trial court summarily dismissed the petition, stating, “There is no requirement [in § 13-708(A)] that the court state its reasons for imposing consecutive sentences on the record. To the contrary, the court is required to state the reasons for its sentence, only when terms of imprisonment are to run concurrently.”

¶4 In his pro se petition for review, Ramon for the first time contends he is entitled to relief because his sentences are illegal. He states his two offenses were committed on the same day as a “spree offense” and argues the trial court failed to consider or give proper weight at sentencing to mitigating circumstances it should have found existed, pursuant to A.R.S. § 13-702(D). He also argues the court erred in sentencing him to a

mitigated term for one of the offenses but not the other. Additionally, Ramon asserted the court had violated his right to due process by dismissing his petition for post-conviction relief without an evidentiary hearing. Ramon requests that this court appoint counsel to brief the issues he has raised in his petition for review, citing *Penon v. Ohio*, 488 U.S. 75 (1988).

¶5 We will not disturb a trial court's summary dismissal of a petition for post-conviction relief absent an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here. Summary dismissal of a Rule 32 petition is appropriate if, after reviewing the petition, the court determines that "no . . . claim presents a material issue of fact or law which would entitle the [petitioner] to relief." Ariz. R. Crim. P. 32.6(c). The court correctly resolved the purely legal issue raised in Ramon's petition for post-conviction relief, *see* § 13-708(A), and "no purpose would [have been] served" by an evidentiary hearing on that issue. Ariz. R. Crim. P. 32.6(c).

¶6 In fact, Ramon does not challenge the trial court's conclusion with respect to § 13-708 in his petition for review, but raises new claims of alleged error that were never considered or decided by the court. These claims are not properly before us for review, and we will not consider them. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review to contain "issues . . . decided by the trial court . . . which the defendant wishes to present to the appellate court for review"); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues on review that "have obviously never

been presented to the trial court for its consideration”). Ramon’s request for appointed counsel in this review proceeding is also denied. *See Lammie v. Barker*, 185 Ariz. 263, 264, 915 P.2d 662, 663 (1996) (“The pleading defendant does not . . . have a right to appointed counsel in Rule 32 proceedings beyond the trial court’s mandatory consideration and disposition of the [post-conviction relief petition].”).

¶7 For the foregoing reasons, although we grant review, we deny relief.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge